

Exemption; guided tours including educational type instruction. An exempt organization whose primary function is conducting guided tours, during which the participants are instructed in the skills and crafts of the area in which they are touring, does not qualify as a nonprofit educational organization for purposes of the exemption from the communications, manufacturers, and retailers taxes.

Advice has been requested whether the organization described below is a 'nonprofit educational organization' for purposes of the exemptions from the retailers excise taxes, the manufacturers excise tax, and the tax on communication services provided by sections 4057(a), 4221(a)(5), and 4294(a), respectively, of the Internal Revenue Code of 1954.

The organization's stated purpose is to promote world-wide understanding and to improve relations between people. It conducts guided tours for small groups of young people, who experience different life styles and cultures in various countries and places. The tours are chaperoned by instructor-counselors who teach the participants certain skills and crafts appropriate to the activities involved in their particular trip, such as camping, climbing, and kayaking. In addition, educational experience is obtained through participation in the everyday activities of people who live at the various tour sites. The organization is exempt from Federal income tax under section 501(c)(3) of the Code.

Sections 4057(a) and 4221(a)(5) of the Code provide that no retailers excise taxes or manufacturers excise taxes shall be imposed with respect to the sale of taxable articles to a nonprofit educational organization for its exclusive use, or in the case of a tax imposed by section 4041 with respect to the use by a nonprofit educational organization of any liquid as a fuel.

Section 4294(a) of the Code provides that no tax shall be imposed under section 4251 on any amount paid by a nonprofit educational organization for communication services or facilities furnished to such organization.

As defined in sections 4057(b), 4221(d)(5), and 4294(b) of the Code, the term nonprofit educational organization means an educational organization described in section 170(b)(1)(A)(ii) that is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described under section 501(c)(3) that is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

Section 170(b)(1)(A)(ii) of the Code describes an educational

organization as an organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. Consistent with section 170(b)(1)(A)(ii) and regulations thereunder, section 148.1-4(b) of the Temporary Regulations under the Excise Technical Changes Act of 1958 provides that such nonprofit educational organization must have as its primary function the presentation of formal instruction.

The statute imposes no limitation on the subject matter of instruction given by a school for purposes of the exemptions. See Rev. Ruls. 73-434, 1973-2 C.B. 71, and 75-215, 1975-1 C.B. 335, which hold certain organizations that provide survival and field study courses, respectively, qualify under section 170(b)(1)(A)(ii). However, the mere fact that an organization has a training program does not, of itself, mean that the program qualifies as a 'school' operated as an activity of an exempt organization within the meaning of the term nonprofit educational organization. See Rev. Rul. 74-366, 1974-2 C.B. 345.

In the instant case, the organization does not qualify as an educational organization described in section 170(b)(1)(A)(ii) of the Code since the primary function of the organization is not the presentation of formal instruction within the meaning of the regulations but rather the operation of guided tours that include social, cultural, and educational activities. In addition, the incidental instruction and training provided are so intertwined with the other activities that they cannot stand alone to function as a school operated as an activity of an exempt organization. Therefore, neither the organization nor its educational function is a nonprofit educational organization within the meaning of sections 4057(b), 4221(d)(5) and 4294(b) of the Code.

Accordingly, the exemptions from the retailers and manufacturers excise taxes under sections 4057(a) and 4221(a)(5) of the Code, do not apply to sales of taxable articles to the organization. Likewise, the exemption from the communications excise tax, provided under section 4294(a), does not apply to amounts paid by the organization for communication services or facilities furnished to the organization.